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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BERTRAM, ERIC D

ART UNIT

PAPER NUMBER

3766

MAIL DATE

DELIVERY MODE

05/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/821,206	Applicant(s) KAMATH ET AL.	
	Examiner Eric D. Bertram	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 17-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/11/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Invention I, claims 1-31, in the reply filed on 2/15/2008 is acknowledged.
2. Applicant's election with traverse of Species A, claims 1-16, in the reply filed on 2/15/2008 is acknowledged. The traversal is on the ground(s) that the species are not mutually exclusive. This is not found persuasive because claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. (MPEP § 806.04(f)). In this case, claim 1 (species A) discloses first and second amplifier inputs, which is not recited in claim 17. Furthermore, claim 17 discloses a switch configured to switch amplification circuitry between first and second input impedances, which is not recited in claim 1. Therefore, Species A and B are mutually exclusive, distinct, and not obvious variants, and as such, are still considered proper.
3. The requirement is still deemed proper and is therefore made FINAL.
4. Regarding Species C, the applicant's arguments are persuasive, and Species C is withdrawn from the Restriction Requirement.
5. Claims 17-58 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and/or species, there being no

allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/15/2008.

Response to Arguments

6. Applicant's arguments, filed 10/22/07, with respect to the rejection(s) of claim(s) 1-16 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Yonce (US 2001/0021813).

Information Disclosure Statement

7. The information disclosure statement (IDS) submitted on 12/11/07 was filed in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 12 recites the limitation "the first and second amplifiers" in the claim. There is insufficient antecedent basis for this limitation in the claim. Claim 1 merely requires first and second inputs, but never positively recites first and second amplifiers. Since claims 13-16 depend from claim 12, they are rendered indefinite by their association.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Yonce (US 2001/0021813). As seen in figures 1 and 2, Yonce discloses a cardiac monitoring device 100. The device includes a housing with amplification circuitry 225, the circuitry having first amplifier input 220A coupled to a first electrode arrangement 110A and second amplifier input 220B coupled to a second electrode arrangement 110B (see par. 0028). The first input/electrode and the second input/electrode each have an impedance associated therewith, and the second input impedance is adjustable relative to the first input impedance (par. 0007). Impedance circuit 239 is connected to the amplification circuitry in the housing, and acts as a signal processor since it helps to separate the ECG source signal 235 using both a first composite signal detected at the first electrode with a first impedance and a second composite signal detected at the second electrode with a second impedance by helping reduce common mode noise (par. 0032).

13. Regarding claim 3, Yonce discloses a first input circuit 215A connected to the first input and a second input circuit 215B connected to the second input, and the phase-shift of each circuit is similar (see figure 2 and par. 0007).

14. Regarding claim 4, there is no structure recited that would preclude the electrode arrangements of Yonce from being operable at a separation distance of 2 centimeters or less. Therefore, this is considered an intended use of the electrode arrangements, and the electrode arrangements of Yonce are inherently capable of being used in this manner, if so desired by the user (see MPEP 2114).

15. Regarding claim 6, there is no structure recited that would preclude the electrode arrangement of Yonce from being operable as a bipolar electrode. Therefore, this is considered an intended use of the electrode arrangement, and the electrode arrangement of Yonce are inherently capable of being used in this manner, if so desired by the user (see MPEP 2114).

16. Regarding claim 7, the electrodes are considered “on the housing” since they are directly connected to the housing (par. 0028).

17. Regarding claims 8-11, Yonce discloses that the electrodes may be surface or implantable electrodes (par. 0028).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Friday from 9:30-6 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. D. B./
Examiner, Art Unit 3766

/Mark W Bockelman/
Primary Examiner, Art Unit 3766
May 8, 2008